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No. 01-1231

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IN THE

Supreme Court of the United States

CONNECTICUT DEPARTMENT OF PUBLIC SAFETY, *et al.*,
Petitioners,

v.

JOHN DOE, *et al.*,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF THE PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA, THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AND THE CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION AS *AMICI CURIAE* SUPPORTING RESPONDENT

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INTEREST OF *AMICI CURIAE* [1]

The Public Defender Service for the District of Columbia (PDS) represents clients who will be affected by this case because of the close similarities between the offense-based 1999 D.C. Sex Offender Registration Act ("DC-SORA"), D.C. Code § 22-4001 *et seq.* (2001), and the Connecticut statute under review. PDS clients have successfully challenged the DC-SORA on the same due process grounds presented in this case. *See Doe v. Williams*, 167 F. Supp. 2d 45 (D.D.C. 2001). The government's appeal is stayed pending a decision in this case. PDS recently filed an *amicus* brief in *Godfrey v. Doe*, No. 01-729. The National Association of Criminal Defense Lawyers ("NACDL") is a nationwide, nonprofit voluntary association of criminal defense lawyers founded in 1958 to improve the quality of the representation of the accused and to advocate the preservation of constitutional rights in criminal cases. The Connecticut Criminal Defense Lawyers Association ("CCDLA") is NACDL's Connecticut affiliate. Any statute or decision concerning the registration of convicted sex offenders is a matter of great importance to the CCDLA, whose members represent affected criminal defendants in all of the Connecticut trial and appellate courts.

STATEMENT

Connecticut's offense-based Megan's law ("SORL"), like Alaska's similar statute (under review in *Godfrey v. Doe*, No. 01-729), represents a legislative effort to protect the community from released former sex offenders, regardless whether they have been unconditionally discharged from their criminal sentences, by subjecting them to a regime of

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[1] The parties' letters of consent have been filed with the Clerk. No party has authored any part of the brief and no entity external to the *amici* organizations has contributed money toward its preparation.

personal registration and community notification of their "registered sex offender" legal status and personal information, designed to warn the community about registrants' appearance and whereabouts for the duration of their registration period. The Second Circuit's opinion, holding that Connecticut registrants possess a liberty interest in their reputations under circumstances where the State implies that they are sexually dangerous while altering their rights and status under state law through the registration duties, represents the near-unanimous view of federal and state courts that have considered the same due process argument.[2]

Connecticut Law: With narrow exceptions, virtually every person convicted (or found not guilty by reason of mental disease or defect) of an offense of a sexual nature, including a wide array of misdemeanors, must register with police and be subjected to public notification. The types of mandatory and permitted public notification are the same for all registrants. The scheme contains two classes of Registrants, however, for purposes of the type of information that must be revealed to police and the duration of registration and public notification. Ten-year registrants include those convicted of criminal offenses against a minor, nonviolent

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[2] *See Fullmer v. Michigan Dep't of State Police*, 207 F. Supp. 2d 650, 661 (E.D. Mich. 2002); *Doe v. Williams*, 167 F. Supp. 2d 45, 55 (D.D.C. 2001); *Doe v. Pryor*, 61 F. Supp. 2d 1224, 1231-32 (M.D. Ala. 1999); *Doe v. Pataki*, 3 F. Supp. 2d 456, 468 (S.D.N.Y. 1998); *W.P. v. Poritz*, 931 F. Supp. 1199, 1219 (D.N.J. 1996), *rev'd on other grounds sub nom. E.B. v. Verniero*, 119 F.3d 1077 (3d Cir. 1997); *Hawaii v. Bani*, 36 P.3d 1255, 1266 (Haw. 2001); *People v. David W.*, 733 N.E.2d 206, 211 (N.Y. 2000); *Noble v. Board of Parole*, 964 P.2d 990, 995 (Ore. 1998). *See also Doe v. Attorney General*, 715 N.E.2d 37, 43 (Mass. 1999) (liberty interest in reputation and registration under state constitution); *Doe v. Attorney General*, 686 N.E.2d 1007, 1013 (Mass. 1997) (same); *Doe v. Poritz*, 662 A.2d 367, 419 (N.J. 1995) (federally protected liberty interest in reputation and privacy); *In re C.M.*, 578 N.W.2d 391, 397 (Minn. Ct. App. 1998); *State v. Pierce*, 794 A.2d 1123, 1133 (Conn. App. Ct. 2002).

sexual offenses (Class A misdemeanors codified in Conn. Gen. Stat. §§ 53a-73a) and, in the sentencing judge's discretion, those convicted of a felony committed for a sexual purpose. Life-registrants include those convicted of a sexually violent offense. *Doe v. Dep't of Public Safety*, 271 F.3d 38, 43 (2d Cir. 2001).

Every registrant must, within three days of his or her release into the community, provide the police with a wide range of "identifying factors," including name, photographic image, address, fingerprints, blood sample for DNA analysis, criminal history and any other characteristics "required by the Commissioner of Public Safety." Conn. Gen. Stat. §§ 54-251(a), 54-252 (a), 54-257(c). All registrants must verify their address every 90 days. § 54-257(c), *as amended*, Pub. Act. No. 02-7 § 84 (2002). A person convicted of a sexually violent offense must additionally provide "documentation of any treatment received for mental abnormality or personality disorder." § 54-252(a).

Any registrant who changes his or her residence must report the change to the police within five days. §§ 54-251(a), 54-252 (a), 54-254 (a). Any registrant who regularly travels into or temporarily resides in another state must report his movements to the Connecticut police and abide with the other state's requirements for sex offenders. *Id.* Every registrant must verify his or her address by completing and returning to the State, within ten days of receipt, a nonforwardable verification form. § 54-257(c). Every registrant must submit to photographing upon demand and at least every five years. §§ 54-251 (a), 252-(a), 254(a). Noncompliance is punishable by up to five years in prison. §§ 54-251(d), 252 (d), 253(c), 254 (b).

SORL makes the registry a "public record" that must be "accessible to the public during normal business hours" and mandates its publication "through the Internet." § 54-258(a)(1). Additionally, any other means of notifica-

tion is discretionary with any state agency if it "believes such notification is necessary to protect the public or any individual in any jurisdiction from any person who is subject to registration." § 54-258(2). Prior to the District Court's injunction, registrants were featured on a Department of Public Safety (State Police) website under the caption "Registered Sex Offender," in a display that provided their names, addresses, photographs, and physical descriptions. The website informed the public that "[t]his information is made available for the purpose of protecting the public." 271 F.3d at 45. It also contained a warning against harassing or injuring registrants and a statement that the Department of Public Safety "has not considered or assessed the specific risk of re-offense with regard to any individual prior to his or her inclusion within this registry, and has made no determination that any individual included in the registry is currently dangerous. Individuals included within the registry are included solely by virtue of their conviction record and state law. The main purpose of providing this data on the Internet is to make the information more easily available and accessible, not to warn about any specific individual." 271 F.3d at 44-45.

SORL mandates the Office of Adult Probation to "develop a community response education program to be offered to neighborhoods and municipalities" that have been notified that a registered sex offender "will be residing in that community." "The purpose of such program shall be to assist neighborhoods, parents and children to learn how to better protect themselves from sexual abuse and sexual assault." Such programs are not mandated for all communities, but only those where a registrant will reside. § 54-261(a). The educational materials that must be generated relate not only to useful tips of general application, but also to "the enforcement of requirements concerning the registration and

supervision of sexual offenders and the notification of communities where such offenders reside." § 54-261(b).[3]

Federal law: The Wetterling Act, 42 U.S.C. § 14071, conditions states' receipt of full federal funding under 42 U.S.C. § 3756 upon creation of conforming sex offender registration programs. § 14071(g)(2). Nonconforming states lose 10% of such funds. § 14071(f)(2). To conform, states must register persons convicted of "a criminal offense against a victim who is a minor" or "a sexually violent offense." § 14071(a)(1)(A). The Act requires no categorical public dissemination at all—only public dissemination of "relevant information" "necessary to protect the public concerning a specific person." § 14071(e).[4]

SUMMARY OF ARGUMENT

The Second Circuit's meticulously reasoned "stigma plus" analysis is firmly grounded in this Court's decisions involving governmental stigma. *e.g.*, *Siegert v. Gilley*, 500 U.S. 226 (1991); *Paul v. Davis*, 424 U.S. 693 (1976); *Goss v. Lopez*, 419 U.S. 565 (1975); *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), and its later cases limiting constitutional torts to those deprivations which are "governmental in nature," *Daniels v. Williams*, 474 U.S. 327, 332 (1986), or inflicted "pursuant to an established state procedure," *Hudson v. Palmer*, 468 U.S. 517, 532 (1984). Because this case involves not just governmental stigma, but its systematic infliction through a statutory scheme that imposes on otherwise free American

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[3] The State and all its agents and employees are absolutely immune from all suits potentially arising from publication of the registry. Conn. Gen. Stat. § 54-258 (b).

[4] Petitioner incorrectly asserts, *see* Pet. Br. at 5 n.5, that the Campus Sex Crimes Prevention Act requires States to categorically disseminate information regarding registrants affiliated with institutions of higher education. See PDS *Amicus* Br. in Godfrey v. Doe, No. 01-729, at 4 n.6.

citizens an unprecedented legal duty to register their personal information and interstate travel plans with the State, there can be no question that the injury of which respondent complains states a violation of the Due Process Clause: it is mandated by an established state procedure that alters Registrants' legal rights and status under state law. *Paul*, 424 U.S. at 708. Recognition of a constitutionally protected liberty interest in this case fulfills the core function of the Due Process Clause—"to secure the individual from the arbitrary exercise of the powers of government," *Daniels*, 474 U.S. at 331 (quoting *Hurtado v. California*, 110 U.S. 516, 527 (1884))—and in no way implicates this Court's concern about litigants converting the Due Process Clause into a "font of tort law." *Paul*, 424 U.S. at 711.

Perhaps for this reason, the State expends much energy on its claim that publication of the sex offender registry inflicts no injury at all because it makes no potentially false statement about current dangerousness, being only a neutral system of records, hardly distinguishable from registrants' judicial records of conviction. The State's decision to target a subclass of former offenders, based on the legislature's publicly recorded belief that they are uniquely dangerous, to subject them to un unprecedented regime of invasive personal registration and community notification of their degraded legal status of "registered sex offenders," along with their current photographs, detailed physical descriptions and information pinpointing their location at all times, conveys precisely the message that the legislature intends to convey: registered sex offenders are uniquely dangerous, the community is well-advised to avoid them, and, to that end, the State has devised an elaborate scheme for rendering them identifiable and locatable at all times so that the public always knows where this lurking danger resides. Not coincidentally, the United States, in parallel litigation involving Alaska's similar "offense-based" Megan's law, has likened public notification to alerting the public about the "FBI's Ten Most

Wanted Fugitives" or "Ten Most Wanted Terrorists," stating that "[l]aw enforcement's disclosure of names, photographs, charged offenses, and other identifying information *pertaining to persons believed to pose a public safety threat* is a common and time-tested method of promoting public safety." U.S. Brief, *Godfrey v. Doe*, No. 01-729 at 19 (emphasis added). The State's reliance on its so-called website "disclaimer" is unpersuasive because all the disclaimer says is that the state police has made no individualized dangerousness determinations. That does not address the problem that clearly the State legislature believes that registrants are sufficiently dangerous to warrant their inclusion in an Orwellian regime that perpetually keeps them under the watchful eye of the State and encourages their neighbors to do the same. In view of the clear purpose and meaning of Megan's laws and the government's own admissions, Connecticut and its *amici*'s arguments about absence of a defamatory meaning ring hollow.

Because Connecticut registrants satisfy the stigma plus test, due process requires a pre-deprivation hearing regarding the accuracy of the State's message. *Roth*, 408 U.S. at 537 n.12; *Goss*, 419 U.S. at 582; *Constantineau*, 400 U.S. at 437. Since SORL's categorical approach precludes even the possibility of such a hearing, the statute is facially invalid.

More broadly, however, this case is not just about unfair reputation-tarnishing statements uttered by the government, but about an unprecedented regime of *personal* regulation of otherwise free American citizens undertaken not just to limit former offenders' access to certain regulated activities or professions (more easily justified under the State's traditional police powers), but to alter and diminish every aspect of their way of life by forcibly enlisting them in a governmental monitoring and community warning venture designed to make them pariahs in their families, their residences, their workplaces, their communities—and ultimately, in their own minds. The status of "registered sex offender," with its atten-

dant registration obligations and State-sponsored community ostracism, is an invasion and legal alteration of a person's very being of the sort historically reserved for those under criminal sentence in order to incapacitate, deter and punish them. Its application to unconditionally discharged former offenders willy-nilly, without regard to individualized justification based on current dangerousness determinations, cannot be squared with fundamental principles of ordered liberty and must therefore be enjoined.

ARGUMENT

I. SORL VIOLATES THE DUE PROCESS CLAUSE BY PUBLISHING POTENTIALLY FALSE DEFAMATORY STATEMENTS ABOUT REGISTRANTS, WHILE ALTERING THEIR LEGAL STATUS UNDER STATE LAW, WITHOUT ANY PROCESS TO DETERMINE THE ACCURACY OF SUCH STATEMENTS.

A. SORL's invasion of an individual's interest in his or her reputation is cognizable under the Due Process Clause because the deprivation is accomplished through the State's alteration of legal rights and status under state law.

The first element of a due process claim alleging damage to reputation is the allegation that the government has published a stigmatizing or defamatory statement that is false. *Codd v. Velger*, 429 U.S. 624, 627 (1977). The second element is that the state also affect "some more tangible interest such as employment," *Paul*, 424 U.S. at 702, or "alteration of legal status" "as a matter of state law." *Id.* at 708. Once these requirements are met, the plaintiff is entitled to a pre-deprivation hearing regarding the truthfulness of the offending statement. *See, e.g., Roth*, 408 U.S. at 537 n.12 (requiring "name clearing" hearing when person loses government employment and employer charges misconduct); *Goss*, 419 U.S. at 582 (absent immediate threat, students are entitled to

pre-removal hearing on allegation of misconduct); *Constantineau*, 400 U.S. at 437 (requiring hearing before a person may be exposed to "infamy" by a posting implying she is a drunkard; "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential"). The purpose of these hearings is to protect the interest in reputation, although absent the additional "plus" factor, this Court has held that no federally protected liberty interest would exist at all. A hearing is not necessarily required to vindicate the interest invaded by the government action constituting the "plus" factor, depending on the nature of that interest. For example, even if the aggrieved party in a government employment termination situation succeeds in defeating the allegation of misconduct at a "name-clearing hearing," he may still be fired for other reasons, or for no reason at all, if he has no independent property interest in the job. "The purpose of such notice and hearing is to provide the person an opportunity to clear his name. Once a person has cleared his name at a hearing, his employer, of course, may remain free to deny him future employment for other reasons." *Roth*, 408 U.S. at 573 n. 12; *see also Dep't of Public Safety*, 271 F.3d at 59.[5]

These principles summarize what the lower courts have dubbed the "stigma plus" requirements of this Court's strand of due process precedents involving governmental defamation. We agree with the Second Circuit that the pur-

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[5] *Constantineau* assumed that no notice or hearing would be required to support suspension of the right to buy liquor within city limits for one year. It was only the public posting, implying a government-sponsored determination that Mrs. Constantineau was a drunkard, that triggered the need for a pre-deprivation hearing. 400 U.S. at 435. Similarly, even if the State had demonstrated that the students in *Goss* would have incurred the same suspension absent certain allegations of misconduct, the students would still have been entitled to an opportunity to be cleared of such allegations. *See* 419 U.S. at 574-75.

pose of the "plus" in government defamation actions is to sort out those defamatory state actions, not just committed under color of law by a State defendant, but which significantly implicate the government's public role in governing its citizens, here, to the point of altering *legal* rights or status.[6] As the Second Circuit recognized, *Paul*'s so-called "plus" requirement for claims of governmental defamation preceded, presaged and plays the functional equivalent of the Court's later requirements for constitutional torts involving claims of governmental deprivation of property or other interests protected by state law. *See, e.g., Daniels*, 474 U.S. at 330 (state official's negligent act causing injury not a "deprivation in the *constitutional sense*," (quoting *Parratt v. Taylor*, 451 U.S. 527, 548 (1981) (Powell, J., concurring)); *Zinermon v. Burch*, 494 U.S. 113, 141 (1990) (O'Connor, J., dissenting) (Court's jurisprudence regarding constitutional torts "has confirmed [a] distinction between deprivation pursuant to 'an established state procedure' and that pursuant to 'random and unauthorized action'") (citing *Hudson v. Palmer*, 468 U.S. at 532-33; *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435-36 (1982)).

Paul's requirements recognize that, on the one hand, the individual interest in avoiding false stigma, in human and state law terms, is frequently enormous and has thus been recognized since ancient times[7] and is actionable "in the

[6] In the government employment line of cases, the government employer does not alter legal status, but the threat of termination acts as that "more tangible interest," *Paul*, 424 U.S. at 702, perhaps to assure that the actionable charge of misconduct be sufficiently formal and intentional, so as not to create federal causes of action for mere careless or random words uttered by officials. While the *Paul* Court did not specifically identify this rationale when it stated that termination of employment in conjunction with defamation suffices for a due process claim, such reasoning would be consistent with its later cases.

[7] "A good name is better than precious ointment." Ecclesiastes, VII, 1 (circa 350 B.C.); "Who steals my purse steals trash; 'tis something,

courts of virtually every State," *Paul*, 424 U.S. at 697; on the other hand, in constitutional terms, the Court has refused to allow "every legally cognizable injury which may have been inflicted by a state official acting under 'color of law' [to establish] a violation of the Fourteenth Amendment," *id.* at 699, converting the Due Process Clause into a "font of tort law to be superimposed upon whatever systems may already be administered by the States." *Id.* at 701.

Here, the Second Circuit applied *Paul* and its predecessors and progeny by requiring that the State action complained of (1) infringe an interest in reputation by publishing a falsely stigmatizing statement, *i.e.*, that registrants are currently dangerous; and (2) do so as part of an integrated statutory scheme that alters registrants' legal status under state law through significant registration obligations, dereliction of which is punishable as a felony, which force registrants to surrender to the State current personal information, including personal description, address, mental health treatment and interstate travel plans and to submit to on-demand photographing. This regime is the necessary predicate to the State's defamation, which cannot be accomplished without up-to-date images and personal registrant information since the whole point of Megan's law notification is to enable the public to readily identify former sex offenders by telling it what they look like and where they reside. These legal obligations distinguish this scheme from *Paul*, where Mr. Davis was not required to say or do anything, although his reputation was arguably damaged in the community. As the Second Circuit noted, the respondent's claim—seeking

nothing; "Twas mine, 'tis his, and has been slave to thousands; But he that filches from me my good name Robs me of that which not enriches him, And makes me poor indeed." William Shakespeare, OTHELLO, III, iii, 155 (1604); Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193, 194 (1890) (citing a 1356 case recognizing slander as a cause of action).

injunctive relief against a stigmatizing public notification scheme founded on the State's unique capacity to impose a leviathan of onerous and humiliating conditions is aimed at the State in its core "governmental" capacity, *Daniels*, 474 U.S. at 332, and thus appropriately draws upon the "heavy artillery" of the United States Constitution. *Dep't of Public Safety*, 271 F.3d at 59.

Connecticut and the United States argue that this case, like *Paul*, involves an allegation of mere stigma, with no "plus." This claim is founded on a basic mischaracterization of Connecticut's integrated statutory scheme and respondent's cause of action. The United States describes the "'state action complained of' in this case" as "facilitating public awareness of respondent's inclusion in the State's sex offender registry, and the alleged stigma resulting there from." U.S. Br. at 14. In actuality, the state action complained of is Connecticut's use of personal information and images it forcibly extracts from registrants, under penalty of five years in prison per violation if they fail to submit, in order to defame them. Conspicuously absent from the government's characterization of the "state action complained of" is any mention of the fact that the sex offender registry, unlike the arrest record in *Paul*, is not a pre-existing public record the government generates in the course of its traditional public functions (and temporally and functionally unrelated to the alleged defamation), like making arrests, but an extraordinary data base compiled solely by virtue of government compulsion uniquely on sex offenders to continually surrender their persons and personal information so the government can track them and encourage the public to ostracize them.

The District Court's selection of a narrow *remedy* that permits registration to continue for exclusive law enforcement purposes so long as publication and defamation cease, *see* U.S. Br. at 14 n. 5, is fully consistent with this Court's

recognition that the redress for a "stigma plus" claim is essentially a "name clearing hearing," *Roth*, 408 U.S. at 573 n. 12; *Dep't of Public Safety*, 271 F.3d at 59, and not a remedy for the state action constituting the "plus." The government does not dispute this, but pretends that so long as categorical registration remains permissible, there can be no objection to publication of the registry. This logic contradicts the Court's government defamation cases and ignores the fact that confidential law enforcement use of the registry is not defamatory because defamation requires publication. In *Constantineau*, for example, the Court assumed that no due process hearing would be required before the plaintiff could be prohibited from receiving liquor within city limits for one year on an *ex parte* basis, 400 U.S. at 509 ("[t]he police power of the States over intoxicating liquors was extremely broad even prior to the Twenty-first Amendment"), and the plaintiff did not seek a remedy for the State's prohibition, but only for its concomitant defamation. *See Constantineau v. Grager*, 302 F. Supp. 861, 865 (E.D. Wisc.1969) (Duffy, J., dissenting); *Constantineau*, 400 U.S. at 435. The fact that a prohibition on liquor could continue apace did not mean that the government could tell the world about it without notice and hearing.

While this case does not present the question whether registration *alone*, without publication, infringes a liberty interest requiring notice and hearing, it is clear that respondent has included the registration duties as an essential component of his "stigma plus" cause of action and is thus complaining, not only that the government is unfairly tarnishing his reputation, but is using its awesome power to prosecute and punish him to enlist him in that venture. As the District Court found:

> The CT-SORA . . . requires nondangerous registrants to repeatedly take specific actions to facilitate the government's ongoing defamatory communications.

> This is no small matter. . . . [R]egistration under a sex offender statute is "a continuing, intrusive, and humiliating regulation of the person himself. To require registration of persons not in connection with any particular activity asserts a relationship between government and the individual that is in principle quite alien to our traditions, a relationship which when generalized has been the hallmark of totalitarian government."

Doe v. Lee, 132 F. Supp. 2d 57, 65-66 (D. Conn. 2001) (quoting *Doe v. Attorney General*, 715 N.E.2d at 43).

Connecticut and its *amici* further misread both the opinion below and this Court's cases to argue that the holding in this case overreaches the limits of due process protections by too broadly interpreting the "plus" requirement. First, Connecticut and the United States parse the Second Circuit opinion, claiming its statement that the "plus factor" must amount to "an indicium of material government involvement unique to the government's public role that distinguishes [a plaintiff's] claim from a traditional state-law defamation suit" collapses the "under color of law" requirement into the requirement that stigma be accompanied by a "plus factor," and further claiming that the Second Circuit's holding would have permitted the plaintiff in *Paul* to maintain a due process claim, Pet. Br. at 34; *see also* U.S. Br. at 16. This startling argument ignores that the opinion makes abundantly clear that the "indicium of material government involvement" must be an actual alteration of *legal* status, something only the government can do and that can never equate to the defamatory utterance alone, 271 F.3d at 56, and that the state action must go "beyond the mere presence of a state defendant." 271 F.3d at 54. The registration duties were absent in *Paul*.

Second, the State claims that *Paul's* "plus" requirement is a requirement that the defamatory speech "cause" the alteration of a right or status under state law. *See* Pet. Br. at 37 (the deprivation of a protected right or status must be "caused by

the alleged defamatory act"); U.S. Br. at 15 (notification and stigma have not resulted in loss of government employment, tax exemption or right to buy liquor). According to the government, here, the defamation does not "cause" the registration duties, but rather, the registration comes before and enables the defamation. Finding no support in this Court's decisions, this criterion is invented by the government and is obviously wrong because defamatory speech will *never* alter one's legal status. Defamation may cause a lot of damage, such as loss of housing, future employment and personal relationships. But those are precisely the types of consequences *Seigert v. Gilley* held could *not* qualify as the "plus" because they are merely the damages caused by the defamation, not an alteration of legal status. 500 U.S. at 234 (the damage that "flows from" the defamatory act cannot be the "plus"). In short, the State misconstrues the "plus" requirement to be precisely what this Court held it is not, damages proximately caused by defamatory speech under tort principles. *See* Pet. Br. at 37 (citing tort proximate cause principles in *Carey v. Piphus*, 435 U.S. 247, 254-55 (1978), to claim the "plus" must be the "compensable injury" "*caused*" by defamation) (emphasis supplied by petitioner)).[8]

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[8] Examination of the relevant cases demonstrates the fallacy of the governments' argument. In *Constantineau* the "state action complained of" was Wisconsin delegating to a wide class of individuals discretion to "post" a person's name in a notice prohibiting others from selling or giving her liquor within city limits for one year. The defamation implied by the posting did not "cause" the loss of the right to receive liquor. Suspension of the right to buy liquor was caused solely by the authority vested by a Wisconsin statute. Here too, the registration requirement precedes the stigma and is intimately connected with it. Similarly, in a loss of government employment situation like that described in *Roth*, the defamation occurs only when a statement alleging wrongdoing is published, yet *publication* does not "cause" the employer's decision to terminate employment. The publication may be the proximate cause of

B. SORL wrongfully damages the reputations of non-dangerous registrants by falsely implying they are dangerous.

The parties clash over the meaning of the message Connecticut conveys to the public by publishing the sex offender registry. The State focuses on the registry's component data, such as name, address, photograph, physical description and record of conviction, and says it is all true, hence, there is no false stigma. By this reasoning, one can defend the Nazis' practice of registering and labeling Jews with gold stars by observing that in fact the labeled persons were Jewish, or, forcing on Arab-Americans a personal registration regime and then establishing a Department of Homeland Security website that plasters their faces, home addresses and identifying characteristics under the banner "Registered Persons of Arab Descent," on the theory that it contains accurate information. The salient question for defamation purposes is not whether sex offenders, Jews or Arab-Americans are accurately identified as such, but what does the government and, more specifically, a law enforcement branch of government like the Connecticut State Police, mean to say by targeting them through a regime of personal monitoring, identifying them, and publishing the results?

Connecticut identifies "registered sex offenders" as dangerous persons likely to re-offend by publishing their current appearance, whereabouts and other personal matters, images and information it obtains by compulsion through an integrated statutory scheme uniquely targeting former sex offenders for governmental monitoring and community ostracism long after their sentences expire. Consequently, Megan's law publication is fundamentally unlike our common law tradition of access to judicial records of historical events adjudicated in

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failure to obtain *future* employment, but, again, as *Seigert* holds, that is not what is contemplated by the "plus."

criminal cases. Open courtrooms and judicial records do not track the whereabouts and appearance of convicted persons after they complete their sentences. They protect the accused's litigative interests and the public's interest in knowing whom their government is charging or convicting and how the government is going about its job. While "having a record" is stigmatizing because it reveals one's past crime, the government's maintenance of such a record connotes no governmental agenda beyond preservation of historical events of legal and public import. The government, like the press, is free to put extant criminal conviction records on the Internet and to enable users to access them by cataloguing them in various ways. Further, the use of modern technology to facilitate access to selected classes of traditionally public records relating to offenses of particular concern to the public, such as sex crimes, drug dealing or insider-trading does not significantly implicate governmental stigma. But when the State publishes the results of an extraordinary personal registration scheme designed to target a class of former offenders for *ongoing* governmental and community oversight by collecting and disseminating their current personal information because of the legislature's belief in their dangerousness, it cannot plausibly maintain that the public will understand that the government is agnostic on the issue of their current dangerousness. Indeed, Megan's laws cannot function on pre-existing public information precisely because their mission is not merely to provide historical conviction information, but to issue a public warning about the current whereabouts and appearance of former offenders so the public can monitor and avoid them.

"The meaning of a communication is that which the recipient correctly, or mistakenly but reasonably, understands that it was intended to express." Restatement (Second) Torts § 563 (1976). In determining the publisher's intent and the recipient's reasonable understanding of that intent, the context and circumstances in which a communication is made are

critically important. "In determining the meaning of a communication, account is to be taken of all the circumstances under which it is made so far as they were known to the recipient." *Id.*, comment e. The government's publication of the sex offender registry means that the government believes registrants are sexually dangerous and therefore unsuitable for the social, economic and personal relationships they may be able to forge absent their constant supervision and exposure thorough public notification. This is the most reasonable meaning of Megan's law notification because of the unique legal, social and historical circumstances attending Megan's laws.

The purpose of Megan's laws, named after a child murdered by a convicted sex offender living in the community, is to target former sex offenders for community warning because the government believes they are dangerous. The public will reasonably understand that government publication of the sex offender registry is intended to fulfill that mission by targeting those former offenders people must avoid to remain safe. The United States has recently represented to this Court that the purpose of publication of a sex offender registry, which, like Connecticut's, is founded solely on prior convictions and not a current assessment of dangerousness, is "to help members of the public protect themselves and their children from falling prey to sex offenders." U.S. Br., *Godfrey v. Doe*, No. 01-729, at 5. The Wetterling Act, the legal and political impetus for Connecticut's and all other current Megan's laws, is based on a Congressional determination "that community notification was essential to allow members of the public to protect themselves from future crimes by convicted sex offenders." *Id.* The United States has cited the Congressional Record's references to "little Megan" who "would be alive today" had a Megan's law been in effect and legislators' assessments that public notification warns of the "threat . . . looming in [the] community." *Id.* n. 7. "The law allows citizens . . . to protect

themselves and their children from falling prey to future criminal acts, by increasing their alertness and modifying their behavior." *Id.* at 18.

As discussed, public notification is not the equivalent of a freedom of information law, but rather a critical ingredient of a government-imposed crime prevention program designed to deprive former sex offenders, uniquely, of anonymity because of the legislature's belief that they are too dangerous "to be let alone," *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting), like everybody else. Through its public laws and the government's publication of information pertaining to persons currently "registered," the public understands the cost the government assesses against registrants in order to make the registry available to the public. The public knows that registrants are required, upon penalty of imprisonment, to sit in police stations for photographs on demand, to divulge their psychiatric treatment histories, their interstate travel plans, their home and work addresses and their personal identifying characteristics, such as scars and tattoos. These requirements are not conditions of their voluntary participation in a regulated profession or activity, but are uniquely imposed on former sex offenders as a condition of being permitted simply to remain in society. Submission to such requirements "asserts a relationship between government and the individual that is in principle quite alien to our traditions." *Doe v. Attorney General*, 686 N.E.2d at 1015-16 (Fried, J., concurring).[9] The public will

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[9] Some states have general "felon registration laws," intended to enhance law enforcement, but which do not permit public disclosure of registrant information. Such laws typically require one-time registration only, sometimes imposing a further reporting duty only in the event of a change in address, contain provisions prohibiting public disclosure and frequently exempt felons whose civil rights have been restored. *See, e.g.*, Ala. Code § 13A-11-181-185; Fla. Stat. Ch. 775.13; Miss. Code Ann. § 97-35-27; Nev. Rev. Stat. 179C.100-170. Thus, while imposing a modest

reasonably conclude that law enforcement agencies go so far as to abridge registrants' civil liberties to extract the information the public needs to arm itself against them, an extraordinary pre-emptive approach to crime that has never been applied in this country to ordinary citizens, because of the legislature's belief in their present dangerousness.

The public spectacle of labeling former sex offenders' images with the names of their crimes is a sanction historically reserved to punish criminals by exposing them to infamy, loss of reputation and community ostracism, often because of the State's belief in their dangerousness. *See* Brief of PDS as *Amicus Curiae* in *Godfrey v. Doe*, No. 01-729, at 20-24. Whether the public understands the vivid display of persons labeled "registered sex offenders" to be the equivalent of a scarlet letter, or, as the United States has suggested, a "most wanted poster" for criminals or terrorists at large, *see* U.S. Br. in *Godfrey v. Doe*, No. 01-729, at 19, the implication of dangerousness is clear.

Connecticut's release of registrants' images and private information, including home addresses and identifying physical characteristics subjects registrants to a significant loss of privacy and a substantial likelihood of harassment and vigilantism. *See Amicus* Br. of N.J. Public Defender in *Godfrey v. Doe*, No. 01-729. Such unprecedented treatment of citizens represents a glaring deviation from American norms of privacy and decency. As the United States recognizes, *see* U.S. Br. at 23 n. 8, our Constitution and common and statutory laws attest to the high value Americans place on the privacy interests SORL invades.[10] The public will

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restriction on liberty to aid law enforcement, they do not publicly brand registrants with a badge of infamy.

[10] *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977) (Due Process Clause protects "the individual interest in avoiding disclosure of personal matters"); *Paul P. v. Verniero*, 170 F.3d 396, 404 (3d Cir. 1999) (privacy interest in home address); *A.A. v. New Jersey*, 176 F. Supp.2d 274, 300

understand that its government does not lightly deprive registrants of a basic human dignity, "the right to be let alone," which Justice Brandeis characterized as the "the most comprehensive of rights and the right most valued by civilized men," *Olmstead*, 277 U.S. at 478 (dissenting opinion), but only because it believes registrants are so uniquely dangerous that they must be rendered locatable and identifiable at all times.[11]

(D.N.J. 2001) (enjoining State, on federal constitutional privacy grounds, from placing registrants' home addresses on the Internet for indiscriminate public access); *Doe v. Poritz*, 662 A.2d 367, 408-09 (N.J. 1995) (New Jersey and Federal Constitutions protect privacy interest in home address because disclosure of sex registrants' addresses is made in context with substantial likelihood for unwanted intrusions); *Doe v. Attorney General*, 686 N.E.2d at 1012-13 (privacy interest under Massachusetts Constitution); *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1064 (6th Cir. 1998) (police officers had federal constitutional privacy interest in the nondisclosure of their home addresses as chance of retaliation and physical violence by private citizens was substantial). "Most courts considering the question . . . agree that privacy of personal matters is a protected interest." *Barry v. City of New York*, 712 F.2d 1554, 1559 (2d Cir. 1983) (collecting cases); Conn. Gen. Stat. § 1-17a (prohibiting state agencies from disclosing citizens' photographs without consent); 18 U.S.C. §§ 2721-2725 (Driver's Privacy Protection Act of 1994, limiting states' ability to disclose personal information collected by motor vehicle departments, including all information that may identify the person, e.g. photograph, name and address); 5 U.S.C. § 552a (Federal Privacy Act); *United States Dep't of Defense v. FLRA*, 510 U.S. 487, 501 (1994) (FOIA does not permit disclosure of home addresses; "[w]e are reluctant to disparage the privacy of the home, which is accorded special considerations in our Constitution, laws, and traditions. . . . [I]t is clear that the individual privacy interest that would be protected by nondisclosure is far from insignificant").

[11] Disclosure of registrants' exact addresses and personal identifying characteristics (*e.g.* scars and tattoos) is particularly disturbing since such information is not normally in the public domain. Indeed, many people make a point of withholding their home addresses from telephone listings and the like. Placing such personal matters alongside registrants' images, their criminal convictions and the State's stigmatizing label of "registered

Because of the nature of the Megan's law mission, it is hard to imagine how even the best-intentioned law enforcement administrators could accomplish community notification without saying registrants are dangerous. Sex offender websites are, in fact, replete with alarming statements that caution people to avoid registrants. In addition to Internet notification, Connecticut, the District of Columbia and other states also permit "active" notification, whereby a police officer may go door-to-door announcing a former sex offender's arrival in the neighborhood, his duty to register, his criminal history and known characteristics. No matter how carefully officers are trained, such targeted disclosure of normally private information can be characterized only as announcing a clear and present danger.

While the Court apparently does not have access to the precise contents of Connecticut's enjoined website, the District of Columbia website, located at http://www.mpdc.dc.gov/serv/sor/sor.shtm, is illustrative. The website, as in Connecticut, is maintained by the police department. It not only lists registrants' information alongside their photograph, but requires nearly all registrants to hold a sign in front of

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sex offender" is a matter of grave concern because the government is not only violating registrants' privacy, but collating information in an explosive package that makes already unpopular persons sitting ducks for all manner of victimization. Thus, the New Jersey Supreme Court has recognized that "the question of whether an individual has a privacy interest in his or her *bare* address does not fully frame the issue. The more meaningful question is whether inclusion of the address in the context of the particular requested record raises significant privacy concerns, for example because the inclusion of the address can invite unsolicited contact or intrusion based on the additional revealed information." *Poritz*, 662 A.2d at 409 (internal quotation omitted). Connecticut recognizes the importance of shielding the residential addresses of federal and state employees who are in the public eye. *See* Conn. Gen. Stat. § 1-217 (CT-FOIA prohibits disclosure of residential addresses of judges, prosecutors, police officers, public defenders and like persons).

their chest with the label "Sex Offender." The site notes that the registry is meant to "enable [the reader] to make appropriate decisions about whether [the reader] want[s] to associate with them or entrust [his] children to them." The "Frequently Asked Questions" section of the site includes the questions "Why is the sex offender moving into my area?" and "If the sex offender is so dangerous, why are you letting him/her out in the first place?" Metropolitan Police alert the reader that the information should be "used responsibly to promote public safety," and makes the following suggestions to parents about what to do "now that I know a sex offender lives in my neighborhood":

> If you decide that you do not want your children to associate with someone in this registry, you can tell your children that this person has hurt someone before. Explain to them that they must stay away from this individual. Review safety tips with your children and be aware of common lures. Remember, the purpose of community notification is to reduce the chance of future victimization of persons *by this offender*. Knowledge of the sex offender should assist you and your family in *avoiding the sex offender and becoming a victim.*

http://www.mpdc.dc.gov/serv/sor/faqs.shtm (emphasis added). In response to the question "What do I tell my children about this offender?" the site suggests that parents "avoid scary details about the offense committed by the sex offender" but that they "may want to advise" children to "call 911 immediately if this person approaches [them]." *Id.* In a similar vein, Connecticut law mandates the Office of Adult Probation to develop community programs to teach communities where a released offender "will be residing" "how to better protect themselves from sexual abuse and sexual assault." Conn. Gen. Stat. § 54-261(a)(b). The program should include provision of information about "the enforcement of requirements concerning the registration and supervision of sexual offenders," §54-261(b), and specific crime prevention techniques, such as

the creation of "a network of 'Safe Houses' for neighborhood children to use when they seek shelter." § 54-261(c)(4). While such programs are laudable and welcome in every community, the fact that Connecticut law mandates them only in conjunction with an identified offender's arrival in the neighborhood contributes to the message that such persons are dangerous.[12]

Public notification that a person is presently likely to sexually offend is about as defamatory a publication as one can imagine. "A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." Rest. (Second) of Torts § 559. This classic description of defamation encapsulates the purpose and effect of Megan's laws. Not surprisingly, then, lower courts considering offense-based Megan's laws like Connecticut's have held that publication of the registry is stigmatizing because it communicates the State's current assessment of a likelihood of continuing criminality, not merely a past record.[13] The government's official public branding of registrants as "registered sex offenders" is exactly the type of "badge of infamy" to which *Constantineau* referred. 400 U.S. at 437. If being labeled a problem drinker is stigmatizing, being labeled a dangerous sex offender is devastatingly so.

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[12]This Court has made clear that a statement may be stigmatizing even if not explicit and even if every reader/hearer might not interpret the statement in the same way: "'Posting' under the Wisconsin Act may to some be merely the mark of illness, to others it is a stigma, an official branding of the person. The label is a degrading one." *Constantineau*, 400 U.S. at 437.

[13] *See, e.g., Fullmer v. Michigan Dep't of State Police*, 207 F. Supp. 2d at 659; *Williams*, 167 F.Supp. 2d at 51; *Bani*, 36 P.3d at 1264.

C. Due process requires a pre-deprivation hearing on the question of dangerousness.

Having established a "stigma plus" liberty interest, Connecticut registrants are entitled to a pre-publication hearing on whether they pose a significant threat to public safety by virtue of their current dangerousness.[14] Many states already successfully administer such offender-based systems, including New Jersey, author of the original Megan's law. Our legal system is founded on the premise that current dangerousness is not merely a matter of conjecture, but an adjudicative fact capable of sufficiently reliable determination to warrant grave legal consequences, such as pre-trial detention, civil commitment, termination of parental rights, or even the death penalty. The type of hearing that must be afforded, the allocation of burdens, the use of presumptions based on prior convictions, or the added fiscal cost to the State are all questions properly addressed under the balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (1976).

The criminal trial itself is not sufficient process, unless public notification is treated as part of the criminal punishment, a position Connecticut has not taken because it wishes to apply SORL retroactively. The criminal trial is not sufficient process because it does not address current

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[14] *See Paul*, 424 U.S. at 711 ("we have repeatedly ruled that the procedural guarantees of the Fourteenth Amendment apply whenever the State seeks to remove or significantly alter [a legally] protected status"); *Goss*, 419 U.S. at 582; *Roth*, 408 U.S. at 537 n.12; *Constantineau*, 400 U.S. at 437; *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 171-72 (1951) (Frankfurter, J., concurring) (requiring adversarial hearing to determine whether organizations may be designated "communist": "The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society"); *National Council of Resistance of Iran v. Dep't of State*, 251 F.3d 192, 205-09 (D.C. Cir. 2001) (pre-deprivation hearing to determine accuracy of classification as "terrorist" organization).

dangerousness, but only whether certain events occurred in the past. In many cases, the judgment itself will be highly probative of current dangerousness, but the State has never suggested, nor could it plausibly maintain, that all registrants are currently dangerous by virtue of their qualifying conviction. Since due process requires "the opportunity to be heard," *Grannis v. Ordean*, 234 U.S. 385, 394 (1914), "at a meaningful time and in a meaningful manner," *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), "on the fundamental facts," *McGrath*, 341 U.S. at 162 (Frankfurter, J., concurring) (quoting *Southern R. Co. v. Commonwealth of Virginia ex rel. Shirley*, 290 U.S. 190, 199 (1933)), the required hearing must address current dangerousness, an inquiry Connecticut's current scheme forbids.

II. THE ABSENCE OF A CRITERION OF CURRENT DANGEROUSNESS MAKES SORL CONSTITUTIONALLY UNACCEPTABLE AS A CIVIL REGULATORY SCHEME.

Connecticut's offense-based Megan's law and Alaska's similar statute (under review in *Godfrey v. Doe*, No. 01-729) are representative of a legislative response to the problem of sex crimes which turns on its head the centuries-old prescription of Anglo-American criminal law that a prisoner must be unleashed from the grip of the State once he has completed his sentence and paid his debt to society. Never before in our history has the State imposed a "regulatory" scheme, founded solely on a prior conviction, that creates a second-class caste of American citizen for all purposes in all life-pursuits, frequently lasting until death. As demonstrated, this case is not about the free flow of criminal history information through advanced technological means, but about the State's authority to permanently degrade a person's legal status so he is no longer just a person, like millions of other Americans, with a criminal past which may or may not be forgiven by his family, neighbors or peers following his legal

repayment of his debt to society, but is labeled a "registered sex offender," a legal leper continually monitored by the State like a probationer or parolee and branded with his crime so that, no matter what he does or where he goes, he can never present himself without simultaneous disclosure of the State's continuing opprobrium. In *Godfrey v. Doe*, PDS as *amicus curiae* argued that such a regime, when based solely on past conviction and not on a current assessment of dangerousness, has been known only as criminal punishment. For that reason, we argued that Alaska's similar scheme cannot be applied to offenses committed before its enactment consistently with the Ex Post Facto Clause. As Justice Kennedy points out in his concurring opinion in *Kansas v. Hendricks*, 521 U.S. 346 (1997), an essentially punitive scheme is no more constitutionally acceptable under the Due Process Clause as a "civil regulatory" scheme in its prospective applications than it is under the Ex Post Facto Clause in its retroactive applications. *Id.* at 373 ("civil" laws may not impose supplementary punishments for sex offenders leniently treated "on the criminal side" "whether the civil confinement statute is put on the books before or after the offense").

Justice Kennedy has "caution[ed] against [the] dangers inherent when a civil confinement law is used in conjunction with the criminal process," *id.* at 372, in the context of sexually violent predator commitment. In a similar vein, former Massachusetts Justice Fried has observed that: "The notification and registration provisions of [a Megan's law] . . . , because they follow on and are closely associated with criminal condemnation raise in an urgent way the constitutional imperative that the distinctiveness of punishment and the stringently limited regime surrounding its imposition not be elided under a loose and casual invocation of the concept of regulation." *Doe v. Attorney General*, 686 N.E.2d at 1016 (concurring opinion). Persons under sentence are required to submit to reporting and surveillance by the State, while the

rest of us are not, precisely because their liberty is conditional. It follows then that unconditionally discharged former offenders cannot be subjected to significant reporting and surveillance of the sort required by SORL absent some additional justification beyond their prior conviction, such as current dangerousness.

If the State needs no special justification here, then it may similarly demand registration and public notification of homosexuals, persons infected with HIV or any other group that does not enjoy heightened equal protection scrutiny and may be of particular concern to political majorities around the country.

> [T]o keep the concept of regulation in its place, it may be said that, while activities, professions, or relationships may be regulated, we do not have a general regime regulating adult competent persons as such. . . . Persons are left to choose freely and if they make the wrong choices they are subject to retrospective condemnation and punishment. This is not merely a conceptual difference. It is a profound expression of our Constitution's conception of human nature and of the relation of individuals to the State.

Id. at 1015. To be sure, this Court has approved regulation of persons based on dangerousness in a variety of contexts, but each has been marked by a degree of urgency entirely absent from Connecticut's categorical scheme, such as during war [15] or a plague,[16] or to detain demonstrably dangerous persons

[15] *See, e.g., Ludecke v. Watkins*, 335 U.S. 160 (1948) (approving unreviewable executive power to detain enemy aliens in time of war); *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding authority of state to exclude persons of Japanese descent from certain locations during war with Japan).

[16] *E.g., Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (upholding compulsory small pox vaccine); *Compagnie v. State Bd. of Health, Louisiana*, 186 U.S. 380 (1902) (upholding state's authority to quarantine).

pending trial on a serious crime,[17] or to civilly commit those who are dangerous and mentally ill.[18]

Megan's laws are different in degree, not kind, from sexually violent predator commitment schemes. *See Doe v. Attorney General*, 686 N.E.2d at 1015 (Fried, J., concurring). Both types of laws restrict the liberties of former sex offenders even after they have completed their sentences because of the fear that they will re-offend. Admittedly, confinement in a prison-like setting, such as in *Hendricks* and *Kansas v. Crane*, 534 U.S. 407, 122 S. Ct. 867 (2002), represents a more concrete and dramatic case of liberty deprivation. On the other hand, sexually violent predators, like other civil committees, are entitled to treatment, may hope for recovery, and possess a judicially enforceable right to end their confinement and re-integrate into the community (at least before Megan's laws) once they are no longer dangerous or mentally ill. As to those for whom freedom will remain theoretical, the substantive and procedural limitations on the State's authority to civilly commit them is proportionate to the restrictions imposed and the extreme nature of the sanction proportionate to the community's need to be safe from them. The Court recognized these principles in *Hendricks* and *Crane* by demanding substantive criteria for civil commitment—dangerousness, mental abnormality and a substantial lack of impulse control—that brought the state regulatory scheme "within th[e] pattern and tradition of civil confinement," *Hendricks*, 521 U.S. at 372 (Kennedy, J. concurring), and assured that "civil" law did not displace criminal law by imposing punitive restrictions on liberty perceived to be desirable, but unauthorized by the criminal judgment. *Crane*, 122 S. Ct. at 870. *See also Zadvydas v. Davis*, 533 U.S. 678, 691 (2001). By lengthening the leash

[17] *United States v. Salerno*, 481 U.S. 739 (1987).

[18] *Foucha v. Louisiana*, 504 U.S. 71 (1992).

for registered sex offenders, the State need not be held to a standard of proving, in addition to dangerousness, "some other special circumstance, such as mental illness," *id.*, but a dangerousness inquiry cannot be dispensed with altogether because the State still imposes a significant restriction on liberty unauthorized by the original sentence.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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